

Service Date: October 13, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Investigation of	)	UTILITY DIVISION
the Sale and Transfer of PacifiCorp's Distribution	)	
System and Public Utility Obligations to	)	DOCKET NO. D98.10.218
Flathead Electric Cooperative, Inc.	)	ORDER NO. 6103

**PROTECTIVE ORDER**

**BACKGROUND**

PacifiCorp owns the distribution facilities in Montana subject of the above captioned investigation of the Montana Public Service Commission ("Commission"). Pursuant to Commission action at a work session held October 7, 1998, the Commission initiated an investigation into issues associated with PacifiCorp's contemplated sale of its Montana distribution facilities to Flathead Electric Cooperative, Inc. ("FEC"). PacifiCorp has moved for issuance of a Protective Order pursuant to §§ 69-3-105 and 30-14-402, MCA.

PacifiCorp has executed a letter of intent with FEC addressing general terms and the parties' intentions regarding the contemplated sale. FEC is currently involved in due diligence efforts which will affect negotiations leading to the Asset Purchase Agreement.

Much of the information associated with the contemplated sale is confidential and commercially valuable or related to personnel matters, such as employee compensation and benefits. The sale transaction has not been closed. Therefore, public disclosure of any confidential commercial or personnel information may have significant, adverse effects on PacifiCorp, FEC, or employees. Disclosure may jeopardize the asset sale. The Company has agreed to make available certain transaction-related documents and information for third party review provided that such documents and information are subject to an appropriate protective order.

PacifiCorp maintained that prompt issuance of a standard Protective Order will expedite review of confidential information, facilitate third party participation in this Docket, and avoid harm to PacifiCorp, its employees and FEC. PacifiCorp requested that the Montana Public

Service Commission issue a standard Protective Order governing confidential information related to PacifiCorp's contemplated sale of its Montana distribution facilities. Issuance of a Protective Order will provide access to relevant information to eligible persons who agree to be bound by the terms of such order.

### ORDER

IT IS ORDERED that this Protective Order covering the material and information, as described by PacifiCorp in its Motion and filed throughout the proceedings in Docket No. D98.10.218, determined by PacifiCorp to be confidential, shall be in effect, unless there is a Commission or PacifiCorp decision that the information need not remain protected, as provided in this Order.

#### Confidential Information

1. (a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories, requests for information, other discovery requests, or subpoenas and depositions, or pursuant to Commission order, that are claimed to be trade secret, privileged or confidential shall be furnished pursuant to the terms of this Order. All persons accorded access under this Order shall treat this trade secret, confidential or privileged commercial and financial information as confidential (referred to as "Confidential Information"). Confidential Information shall not be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. PacifiCorp shall mark or stamp all material claimed to be Confidential Information with a designation indicating its trade secret, proprietary or confidential nature, and submit this Confidential Information to the Commission on yellow paper for identification for filing purposes.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information submitted pursuant to this Order shall be given solely to counsel for the parties and shall not be used or disclosed except for purposes of this proceeding. However, counsel may authorize access to any specific Confidential Information solely for the purpose of this proceeding to those persons designated their experts in this matter. Any member of the Public Service Commission and staff, the Consumer Counsel and its staff and staff members of intervenor State agencies may have access to any Confidential Information provided under this Order, and shall be bound by the terms of this Order.

(c) Nondisclosure Agreement. Before giving access to Confidential Information to any counsel or expert pursuant to paragraph 1(b), counsel for the person seeking review of the Confidential Information shall deliver a copy of this Order to the person, who shall agree in writing to comply with and be bound by this Order before disclosure. Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement form

incorporated herein as Exhibit "A." Exhibit "A" requires the persons obtaining disclosure first to read a copy of this Protective Order and certify in writing that they have reviewed the Order and consent to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. The agreement shall be delivered to counsel for PacifiCorp and a copy delivered to the Commission.

(d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. The Confidential Information may also be made available for review by counsel and experts accorded access in a place and a time mutually agreed on by the parties, or as directed by the Commission.

2. Challenge to Confidentiality.

(a) This Order establishes a procedure to expedite handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.

(b) Objection to Trade Secret Status. If the parties are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential or privileged commercial and financial information, the party objecting to the trade secret claim shall request the Commission's review pursuant to this Order. Upon determining whether any documents, data, information, studies or other submitted matters are Confidential Information, the Commission will enter an order resolving the issue.

(c) Request for Removal from Protection. Any party upon ten (10) days notice may file a request for removal of Confidential Information from the protective requirements of this Order or from the sealed record, to be placed in the public record. Upon a challenge to the confidential or proprietary nature of this information, a hearing examiner and/or the Commission shall resolve the issue following proceedings in camera conducted with only persons present with authorized access to such confidential matter. The record of in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER, DOCKET NO. D98.10.218" and transcribed only upon agreement of the parties or Order of the Hearing Examiner or the Commission. If transcribed, the record shall be separately bound, segregated, sealed, and withheld from inspection by any person not authorized disclosure under this Order. There may be no release from the restrictions of this Order without either an agreement of the parties or an Order of the Hearing Examiner or the Commission, after notice to the parties and a hearing. If the Hearing Examiner or the Commission should rule that any information should be removed from the protection of this Order or the sealed record, the parties, at the request of the providing party to enable it to seek a stay or other relief, shall not disclose such information or use it in the public record for five (5) business days.

3. Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER, DOCKET NO. D98.10.218." Due to the trade secret nature, these materials shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.

4. Citations and References in Pleadings and Briefs. Reference to Confidential Information in the sealed record, when necessary in pleadings, cross-examination, briefs, argument or motions, shall be by citation of title or exhibit number or some other nonconfidential description. Substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

5. Reference to Confidential Information.

(a) Use in Decisions and Orders. When practicable, the Commission will refer to Confidential Information in only a general form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary in this proceeding to discuss Confidential Information other than in a general form, the discussion with this protected information shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary for Record. In all instances when PacifiCorp files material with the Commission pursuant to this order which PacifiCorp considers to be Proprietary Information, PacifiCorp shall concurrently file a brief non-proprietary written summary of the Proprietary Information. In other instances, if deemed necessary by the Commission, PacifiCorp shall prepare a written summary of the Proprietary Information referred to in a decision or order to be placed on the public record.

6. Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated and withheld from inspection by any person not bound by the terms of this Order. Confidential Information may be released from the restrictions of this Order by agreement of the parties or, after notice and hearing, pursuant to an Order of the Commission or final order of a Court having jurisdiction. The Consumer Counsel may retain all written Confidential Information obtained under this order, but shall withhold it from inspection by others, except for Consumer Counsel staff and counsel, unless it is released by the Public

Service Commission and/or a final order of a court under this paragraph, subject always to the terms of confidentiality in this Order.

7. Preservation of Confidentiality. All persons receiving access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than to prepare for and conduct this proceeding as provided in this Order, and shall take reasonable precautions to keep the Confidential Information secure, pursuant to this Order.

8. Reservation of Rights. The parties affected by the terms of this Protective Order further retain the right to question, challenge and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

9. Nonwaiver of Rights. This Order does not constitute any waiver of the rights of any party in this Docket to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal such determination of the Commission or such assertion by a party.

10. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend these provisions, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 13th day of October 1998 by a vote of 5-0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in PacifiCorp Docket No. D98.10.218 dated October 13, 1998 and agree to be bound by the terms and conditions of such order.

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Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Employer or Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date